IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

WP(C).No. 32955 of 2006(W)

PETITIONERS:

1. KRISHNAN, S/O.RAMAN,
   NILATHUMANNIL HOUSE,
   P.O.THENKARA, PALAKKAD DISTRICT.

2. CHAMI, S/O.RAMAN,
   NILATHUMANNIL HOUSE,
   P.O.THENKARA, PALAKKAD DISTRICT.

   BY ADV. SRI.T.SETHUMADHAVAN
   ADV SRI.PUSHPARAJAN KODOTH
   ADV. SRI.K.JAYESH MOHANKUMAR

RESPONDENTS:

1. STATE OF KERALA,
   REP. BY CHIEF SECRETARY.

2. TAHSILDAR,
   LAND ACQUISITION,
   COLLECTORATE, PALAKKAD.

3. DISTRICT COLLECTOR,
   PALAKKAD.

   BY ADDL.ADVOCATE GENERAL
   BY GOVERNMENT PLEADER ADV. SHRI BENNY VARGHESE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

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W.P.(C) No. 32955 OF 2006

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Dated this the 15th January, 2007

J U D G M E N T

The reliefs sought for in this Writ Petition are the following:

> *"i) Issue a Writ of Certiorari or any other appropriate writ, order or directions quashing all further proceedings pursuant to Exts. P3 and P7; and*
>
> *ii) Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the respondents to drop all further proceedings pursuant to Ext. P7."*

Ext.P3 is the notice issued under Rule 7(1) of the Land Acquisition (Kerala) Rules. Notification under section 4(1) of the Land Acquisition Act was published in the Gazette on 21.06.2006. As per the notification, the land belonging to the petitioners is sought to be acquired for the purpose of upgradation of Thenkara U.P. School. On receipt of Ext.P3 notice, the first petitioner, Navunni @ Krishnan (in the Writ Petition his name is shown as Krishnan) submitted Ext.P4 objections and the second petitioner submitted Ext. P5 objections. Thereafter, Ext.P6 notice was issued under Rule 8 (1) of the Land Acquisition(Kerala) Rules directing the petitioners to

appear on 04.10.2006. It is submitted that pursuant to Ext. P6 notice, petitioners appeared on 04.10.2006. Ext.P7 is the notice issued by the Special Tahsildar (Land Acquisition) directing the petitioners to appear at 11.00 a.m. on 26.10.2006 for enquiry under section 5A of the Land Acquisition Act . It is stated that the petitioners appeared on 26.10.2006 through counsel and the petitioners were informed by the second respondent that they would go ahead with the proposal for acquiring the property belonging to the petitioners.

2. It is stated that the land sought to be acquired is a rubber plantation with more than 700 trees, aged 10 and that the petitioners are in possession of the property having an extent of 5 acres. Ext.P1 plan is produced by the petitioner to show the lie of the land sought to be acquired, place where the school is located etc. The objection seems to be that on the side of the school compound, an extent of 75 cents of land belonging to Lakshmi Amma is situated and that land which is a vacant land is not being acquired; instead of which, the land belonging to the petitioners is sought to be acquired. It is submitted by the counsel for the petitioners that there is no reason why the property belonging to Lakshmi

Amma is excluded from acquisition. It is stated in the grounds that the entire proceedings initiated by the second respondent is vitiated with political malafides. No details are furnished in the Writ Petition as to what constitutes malafides. Another objection raised is that the acquisition of the land belonging to the petitioners is not really for a public purpose as there are four schools in a radius of 5 Kms and that the acquisition is therefore absolutely unnecessary. It is stated in ground 'E' that the petitioners made a representation that instead of taking the entire land proposed to be taken from the petitioners, proportionate lands could be taken from other land owners for the purpose.

3. A counter affidavit is filed on behalf of the second respondent, in which the allegations in the Writ Petition are denied. It is stated that as per Government Order (Rt) No. 1287 of 2005 dated 31.03.2005, Government have accorded sanction to acquire an extent of 0.8 hectors of land in Sy.No.116/11A, 1B1, 8A9 Pt and 11A1A1, 12A1 of Mannarghat -II Village for upgrading Government U.P. School, Thenkara. The inspection of the property was conducted on 02.06.2005 with the help of Panchayat authorities. It is stated that the funds for the acquisition have

been received from the Requisitioning Authority, viz., Thenkara Grama Panchayat. It is stated in the counter affidavit that Mannarghat Grama Panchayat was subsequently divided into two Panchayaths, viz., Mannarghat Grama Panchayat and Thenkara Grama Panchayat and that the lands sought to be acquired is situated in Thenkara Grama Panchayat. Enquiry under section 5A of the Land Acquisition Act was conducted and the petitioners were heard. A report was submitted to the Commissioner of Land Revenue, Thiruvananthapuram along with a draft declaration, copy of the enquiry report and other relevant records. It is stated in the counter affidavit that Ext. P1 is not a correct plan showing the correct lie of the property. The correct plan is produced as Ext. R2(b) along with the counter affidavit. A perusal of the plan as well as counter affidavit would indicate that the property which is sought to be acquired is situated on the western side of U.P. School and that it is the adjacent property. The property of Lakshmi Amma and Janaki Amma are situated on the northern_side of the School compound. The total extent of the property belonging to Lakshmi Amma is only 35 cents, out of which an extent of 2.25 cents is being acquired for the purpose. The extent of Janaki

Amma's property is 39.90 cents, out of which an extent of 5.18 cents is being acquired. An extent of ½ cent is also sought to be acquired from the property belonging to Venugopalan. The acquisition of portions of properties belonging to Lakshmi Amma, Janaki Amma and Venugopalan is intended for the purpose of a road leading to the property belonging to the petitioners, which is sought to be acquired. The properties of Janaki Amma and Venugopalan are residential plots.

4. It is for the authority under the Land Acquisition Act to decide the feasibility of the land to be acquired for the public purpose. Objections were called for and the petitioners were heard. In the counter affidavit, facts have been stated in detail. Counter affidavit as well as the plan produced therewith would indicate that the objections raised by the petitioners are bereft of bonafides. It is true that the petitioners may lose lands belonging to them. The objection that there is no public purpose is also denied in the counter affidavit . The allegation that other vacant lands are available in the locality is also denied. The decision taken by the authority under the Land Acquisition Act, unless it is vitiated by malafides, cannot be lightly interfered with, in the exercise of the jurisdiction under Article 226

of the Constitution of India .

In the facts and circumstances of the case, I am not inclined to exercise jurisdiction under Article 226 of the Constitution. No grounds are made out for granting the reliefs sought for in the Writ Petition and it is accordingly dismissed.

Sd/- K.T. SANKARAN,
JUDGE.

/true copy/

P.A. TO JUDGE

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